

IN THE SENTENCE REVIEW DIVISION
IN THE SUPREME COURT OF THE STATE OF MONTANA

No. _____

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| IN THE MATTER OF THE REVISION OF THE |) | |
| RULES OF THE SENTENCE REVIEW DIVISION |) | ORDER |
| OF THE MONTANA SUPREME COURT |) | |

It has come to the attention of the members of the Sentence Review Division of the Montana Supreme Court that Rule 15 of the Division’s rules is arguably inconsistent with the statutory authority granted the Division by Mont. Codes Ann. § 46-18-904(1). Specifically, Rule 15 of the Division’s rules provides that “[i]f the sentencing judge did not set forth his reasons for sentence, or did not consider a pre-sentence report, or if there are critical matters which should have been presented at the sentencing hearing, the Sentence Review Division may vacate the sentence and remand it for re-sentencing based upon proper documentation. In the event the sentence and judgment contains clerical errors, the Sentence Review Division may vacate the sentence and remand for re-sentencing or may correct such clerical errors in the interest of judicial economy.” Mont. Codes Ann. § 46-18-904(1), on the other hand, makes no provision for the Sentence Review Division to vacate or remand a sentence under review to the trial court for re-sentencing.

With the noted inconsistency in mind, the Sentence Review Division, pursuant to its rule making authority under Mont. Codes Ann. § 46-18-901(4), proposes to strike the offending language from its Rule 15 as follows with the balance of the rule to remain unchanged:

~~If the sentencing judge did not set forth his reasons for sentence, or
did not consider a pre-sentence report, or if there are critical~~

~~matters which should have been presented at the sentencing hearing, the Sentence Review Division may vacate the sentence and remand it for re-sentencing based upon proper documentation. In the event the sentence and judgment contains clerical errors, the Sentence Review Division may vacate the sentence and remand for re-sentencing or may correct such clerical errors in the interest of judicial economy.~~

The Division urges the practicing Bar and members of the Judiciary to provide their comments on the proposed Rules to the Division with the above-stated goal(s) in mind.

Therefore, pursuant to Mont. Codes Ann. § 46-18-901(4),

IT IS ORDERED that until 5:00 p.m., February 29, 2008, the Division will accept written public comments on the referenced revision(s) to Rule 15 of the Sentence Review Division's rules. Each person submitting comments shall file an original and three (3) copies of his or her comments with the Secretary of the Sentence Review Division within the time herein provided.

IT IS FURTHER ORDERED that a copy of this Order be electronically published on the State Bar of Montana Website, <http://www.montanabar.org>, and on the website for the Judicial Branch, <http://www.courts.mt.gov>, and that a copy of this Order be published in the next available issue of *The Montana Lawyer*. We leave it to the editor of *The Montana Lawyer* whether to publish the actual Order in the hard copy of that publication.

IT IS FURTHER ORDERED that notice of this Order be served by electronic transmission to: the Executive Director of the State Bar of Montana; Randi Hood of the State Office of the Public Defender; the President of the Association of Criminal Defense Lawyers; Mike McGrath of the Montana Attorney General's Office; the State Law Librarian; the Clerks of the District Court with the request that they provide a copy to all District Judges in their county;

the President of the Montana Judges' Association; and the President of the Montana Magistrates' Association.

Dated this _____ day of _____, 2007.

Hon. Randal I. Spaulding, District Judge
Chairman, Sentence Review Division